

### REMARKS

This preliminary amendment accompanies a request for continued examination (RCE) following the final Office action of April 30, 2004.

Applicant asks that all claims be examined in view of the amendment to the claims.

Claims 1-4 were withdrawn as the result of a restriction requirement.

Claim 5 has been amended by incorporating the feature(s) of claim 6, which has been canceled.

Claim 28 has been added.

Claims 5 and 7-28 are pending for examination.

Applicant's attorney thanks the Examiner for the courtesy of the telephone conference on about October 19, 2004 to confirm the status of the claims in view of the Advisory Action (page 2), dated October 13, 2004, and the final Office action (page 5, par. 6), dated April 30, 2004.

It is applicant's understanding (i) that the amendment to claim 8 in applicant's reply to the final Office action overcame the rejections of claims 8, 10, 12, 14, 16, 18, 20, 23, 25 and 27 under 35 U.S.C. § 112, par. 2, and (ii) that the Examiner agrees with the applicant's arguments with respect to claims 7 and 19 as not being anticipated by U.S. Patent No. 5,578,514 (Kwon et al.). Therefore, claims 7-20 and 22-27 now include allowable subject matter.

Claims 5 and 21 remain rejected as anticipated by U.S. Patent No. 5,578,514 (Kwon et al.).

Independent claim 5 now recites forming a first drain region partially under the first gate insulation film and a second drain region adjacent to and above the first drain region, wherein the first drain region has a lower impurity concentration than the second drain. For example, the particular embodiment of FIG. 4 shows the first drain region 5A under the first gate insulation film 4, and the second drain region 5B adjacent to and above the first drain region. Claim 5 also recites a third drain region, which in the embodiment of FIG. 4, is shown as the N<sup>+</sup> region 10.

Those features are not disclosed or suggested by the Kwon et al. patent. The final Office action (at the top of page 4), alleges that the n-type drift region 24 in FIG. 4 of the Kwon et al. patent somehow corresponds to both the first and second drain regions recited in claim 5 and that the n+ region 36 in FIG. 4 of the Kwon et al. patent corresponds to the third drain region recited in claim 5. Even if one were to somehow define two separate areas of the drain region 24, there is no disclosure that the lower portion of the drain region 24 would have a lower impurity concentration than the upper portion of that drain region. All that is disclosed by the Kwon et al. patent is that a dopant region 23 (*see* FIG. 1) is driven in to produce the N-type drift region 24, which extends through the epitaxial layer 14 to the substrate 12.

There is no basis for alleging that the feature in claim 5 regarding the relative impurity concentrations is inherent in the disclosure of the Kwon et al. patent. *See, e.g., EMI Group NA. v. Cypress Semiconductor Corp*, 60 USPQ2d 1423 (Fed. Cir. 2001) (inherency requires that the missing feature is "necessarily present."). If anything, the Kwon et al. patent suggests that the drain region 24 should have a substantially uniform impurity concentration.

In view of the foregoing remarks, applicant respectfully requests allowance of all claims, including claims 5, 21 and 28.

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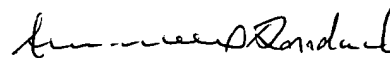
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Enclosed is a check for the Petition for Extension of Time fee.

Please apply any other charges or credits to deposit account 06-1050.

Respectfully submitted,

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